

MEMORANDUM OF LAW

DATE: November 22, 1988

TO: John Lockwood, City Manager

FROM: City Attorney

SUBJECT: Propositions F and G on the November 8, 1988
Ballot

You asked for a priority review of the above-referenced measures focusing on whether both can be implemented since they both "received over 50% favorable votes."

For clarity of reference, we note Proposition F proposed to add Section 57.1 to the San Diego City Charter entitled "Police Review Commission" while Proposition G proposed to amend Section 43 of the San Diego City Charter to add subsection (d) entitled "Citizens' Review Board on Police Practice." While the Registrar of Voters has not certified the final vote, the Registrar reports all votes, including absentee ballots, have been counted and reports the affirmative vote (the significance of which is discussed infra) is as follows:

Proposition F: 179,102

Proposition G: 179,917

Registrar's County Wide

Cumulative Report, November 10, 1988

Where two or more conflicting measures pass, the California law is unambiguous in the result.

(b) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

Cal. Const. art. 2, sec. 10(b)

Accord: California Elections Code section

4016; San Diego Municipal Code section 27.2527

We must therefore look to the provisions of Propositions F and G to ascertain whether they "conflict." It takes no more than an examination of the first sentence in Proposition G to answer this question in the affirmative. While both Propositions F and G deal with the same subject matter (the evaluation of complaints arising from activities of and in the Police Department), Proposition G begins with the sentence "Notwithstanding any other provision of this Charter, the City Manager shall have the exclusive authority to create and establish a citizens' review board" This sentence

establishes two (2) important points. First "notwithstanding any other provision" clearly denotes that the provisions of G predominate over any other provision. Secondly, by giving the City Manager "exclusive" authority to create and establish the reviewing body, it negates all alternative methods of establishing the reviewing body. Hence it directly conflicts with the authority of the Mayor to appoint and the Council to confirm as a means of establishing the reviewing body contemplated in Proposition F. Any other construction would negate the mention and meaning of the word "exclusive." It is axiomatic that words in a statute are given their ordinary and true meaning. *Los Angeles v. Frisbie*, 19 Cal.2d 634 (1942). Webster's Collegiate Dictionary (9th ed.) defines "exclusive" as "excluding others from participation." This word clearly renders the two provisions in conflict, for it underscores the sole authority of the City Manager to establish the reviewing body.

Additionally, the two propositions conflict in the manner in which the reviewing board is governed. Proposition F provides "The Commission shall establish ... rules and regulations ... to carry out its purposes ..." while Proposition G clearly mandates "The City Manager shall establish such rules and regulations ... to carry out its functions" Hence the very internal procedures under which the evaluative review is to function under Proposition F is left to the body itself, while under Proposition G the Manager is the sole provider of the body's rules and regulations.

The conflicts of Propositions F and G are also evident from their presence on the same ballot and posed as alternative measures. See, *Argument in Favor of Proposition F* ("The police union doesn't want anyone except police to review cops so they put an alternative measure on the ballot.") *Sample Ballot and Voter Information Pamphlet*, General Election, November 8, 1988. The whole purpose of an alternative measure is to give voters a choice with the proposition with the most affirmative votes being enacted.

Our view of the initiative process is consistent with article II, section 10 of the Constitution and Elections Code section 4016. Both the Constitution and the Elections Code, by providing a procedure for resolving conflicts, plainly contemplate elections where the people are asked to choose between conflicting proposals. Where such conflicts occur provisions such as section D, which give

voters notice of a conflict, assist voters in making an intelligent and informed decision.

Our unwillingness to ignore section D is buttressed by the fact that section D was presented to the voters at the November 1986 election. Were we to amend Proposition E by striking section D, as Concerned Citizens seems to suggest, we would disenfranchise all those Carlsbad residents who voted for both propositions on the premise that only one would be enacted. (See *Hass v. City Council*, 139 Cal.App.2d 73, 76 (1956)).
Concerned Citizens v. City of Carlsbad, 204 Cal.App.3d 937, 943 (1988).

Like the competing growth measures reviewed in *Citizens v. Carlsbad*, the language of Proposition G in both creation and operation of the reviewing board conflicts with Proposition F. Such conflicting language coupled with their competing position on the same ballot purposefully placed as alternative measures lead to the inexorable conclusion that Propositions F and G conflict. Such a conflict is resolved by the unambiguous rule of "highest affirmative vote." Hence in light of the Registrar's figures, Proposition G with 179,917 votes received the "highest affirmative vote" and therefore prevails over Proposition F.

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By

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